IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 196 of 2001

with

COMPANY PETITION No.96 of 1992

with

COMPANY APPLICATION No.156 of 1995

in

COMPANY PETITION No.96 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BOARD OPINION - Petitioner(s)

Versus

ENERJON TECHNICS CO. LTD. &9 - Respondent(s)

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Appearance :

BOARD OPINION for Petitioner No(s).: 1.

NOTICE UNSERVED for Respondent No(s).: 1.

NOTICE SERVED for Respondent No(s).: 2,3,4,7,9.

SINGHI &CO for Respondent No(s).: 5.

NOTICE NOT RECD BACK for Respondent No(s).: 6,10.

SERVED BY RPAD - (N) for Respondent No(s).: 8.

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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 07/07/2005

ORAL JUDGMENT

1. Company Petition No.196/2001 is registered on the basis of opinion forwarded by Board for Industrial and Financial Reconstruction (BIFR) on 4.10.2001 to the Registrar of this Court under Section 20(1) of Sick Industrial Companies (Special Provisions) Act, 1985 stating that it is just and equitable that M/s. Enerjon Technics Co. Ltd., should be wound up. The Board has observed in its order dated 29.8.2001 that the Company did not have any alternative offer for revival of the Company. They had been making efforts but on account of the prevailing conditions no commitment could be obtained from anywhere so far. Their factory was lying closed since last 8 to 9 years on account of problems in getting raw material. The Board has further observed that in view of there being no objection to the winding up of the Company from anywhere, the Bench reiterated its earlier conclusions that despite having allowed adequate time and opportunity to the promoters and the OA having explored other possible options also it had not been possible to work out any acceptable revival scheme for the Company which could have enabled it to turn its networth positive within a reasonable time frame while discharging all its due financial obligation. Accordingly, the Bench confirmed its prima facie opinion for winding up of the company issued earlier and referred the matter to this Court for winding up the Company.
2. This Court has passed an order on 18.2.2002 whereby the petition was admitted and order regarding advertisement was passed. The Court has also appointed the Official Liquidator as Provisional Liquidator of the respondent Company and directed the O.L to take over the assets of the Company and to prepare the inventory and valuation report. The Court has also made it clear that the expenses for this activity shall be initially borne by the O.L from the Company Paid Staff Reserve Fund A/c and the same shall be reimbursed by the secured creditors.
3. Despite the aforesaid order passed by this Court on 18.2.2002 the advertisement was not issued and hence on 18.11.2002 this Court has passed further order, wherein it is observed that till the date of the said order neither any advertisement was issued nor any report

was filed by the O.L. It has also not come on the record as to whether the O.L has taken over the possession of the respondent Company. The Court has, therefore, directed the O.L to comply with the order passed by this Court on 18.2.2002 within 10 days from the date of the said order.

4. Pursuant to the order passed by this Court on 18.11.2002 the O.L has filed his report on 5.12.2002, wherein he has stated that the O.L has published the advertisement of petition in the two newspapers and the copies of paper clippings of the said advertisement published in the said two newspapers were annexed alongwith the said report. He has also stated in the said report that he has not received any objection / affidavit in opposition or in supporting to the said petition.
5. As far as Company Petition No.96/1992 is concerned, the same is filed by the petitioner – N. Jamnadas &Company. However, the said petition could not be proceeded further in view of the pendency of the respondent Company's reference before BIFR. The Court has also passed an order on 16.9.1997 to that effect. Thereafter, Company Application No.156/1995 was filed by the respondent Company seeking stay of order of admission and advertisement passed by this Court on 26.7.1995 in Company Petition No.96/1992. Accordingly, in that petition no order of advertisement was passed and subsequently when the Board has formed its opinion and this Court has admitted the petition and passed the order regarding advertisement, the same was be published.
6. Since the petition is admitted and advertised long back in 2002 and O.L has taken the charge of the assets of the Company pursuant to the order passed by this Court in November, 2002, the Company could not carry on its business activities since then and hence there is no question of restarting the Company. The Company is not in a position to discharge its financial liability towards its creditors. It has become an established position that the financial substratum of the Company has gone down and looking to the liability of the Company which are far in excess of the assets of the Company, the only alternative which remains in the present case is to wind up the Company. Mr.Harin Raval learned advocate appearing for the respondent Company has submitted that the possession of the assets has already been handed over to the O.L and Statement of Affairs is also filed, since the matter has come up for hearing after a long time, the winding up order is now required to be passed in this matter. The Court hereby accordingly passes the winding up order in Company Petition No.196/2001 and the O.L attached to this Court is appointed as Liquidator of the company. Since the charge has already been taken over and pursuant thereto he has also made the inventory for which

separate report has already been filed earlier before this Court for seeking appropriate order, there is no question of passing any order for taking possession. The O.L will take appropriate steps for realising the assets of the Company in liquidation and he will exercise all the powers conferred upon him under the Companies Act, 1956.

7. Pursuant to this order the O.L will constitute Sale Committee and take appropriate steps with regard to realisation of the assets of the Company and intimate the secured creditors and all other concerned. The O.L shall also invite claim from the workers as well as from the secured creditors and examine the Statement of Affairs which has been filed and he will file fresh report regarding the present position of the Company.
8. With these observations and direction Company Petition No.196/2001 is accordingly disposed off.
9. In view of the order passed in Company Petition No.196/2001, the Company Petition No.96/1992 as well as Company Application No.156/1995 do not survive and hence they are also accordingly disposed of without any order as to costs.
10. Office is directed to place copy of this order in Company Petition No.96 of 1992 as well as Company Application No.156 of 1995.

(K.A.PUJ,J.)
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